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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 606

WAYNE K. PATTERSON, Warden of Colorado State Penitentiary, *Petitioner,*

vs.

RAUL LEOPOLDO CRUZ, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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vs.

RAUL LEOPOLDO CRUZ, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

OPINIONS BELOW

The opinion of the Federal District Court is found at page 27 in the record as printed for the use of the court below and is cited as *Cruz v. Patterson*, D. C. Colo., 253 F.Supp. 805. The opinion of the United States Court of Appeals is found at page 4 of the supplemental record.

STATEMENT OF GROUNDS OF JURISDICTION

The opinion of the United States Court of Appeals for the Tenth Circuit was filed in that court on August 8, 1966. The jurisdiction of this Court is invoked by reason of 28 U.S.C.A. § 1254 and Rule 19 of this Court.

QUESTIONS PRESENTED FOR REVIEW

Whether the United States Court of Appeals for the Tenth Circuit erred in adopting the opinion of the Federal District Court for the District of Colorado?

a. Whether the Federal District Court erred in finding that the procedure followed by the Colorado Supreme Court in appointing counsel for Respondent denied him effective assistance of counsel?

b. Whether the Federal District Court erred in concluding that the system utilized by the Colorado Supreme Court is a "screening device" which resulted in counsel in this case assuming primarily the role of an advisor rather than an advocate?

c. Whether the Federal District Court erred in determining that as a result of the procedure followed by the Colorado Supreme Court the Respondent was denied equal protection of the law and due process of law contrary to the Fourteenth Amendment, United States Constitution.

STATEMENT OF THE CASE

In August, 1959, Raul Leopoldo Cruz, Respondent, was convicted of robbery and conspiracy to commit robbery; he was represented by court appointed counsel. Respondent's counsel filed a motion for new trial which was denied. Desiring to appeal his conviction, he requested counsel to assist him on his appeal and such requests were denied. Thereafter, he brought writ of error, pro se, to the Colorado Supreme Court alleging the

same assignments of error as were presented by his counsel in his motion for a new trial. On February 6, 1962, the conviction was affirmed on the merits. *Cruz v. People*, 149 Colo. 187, 368 P.2d 774.

In February of 1965, Respondent filed in the state court a petition for writ of habeas corpus, contending that the court's refusal to afford him the aid of counsel on appeal denied him the constitutional guarantees of due process and equal protection of the law as enunciated in *Douglas v. California*, 373 U.S. 353, 83 S.Ct. 814, 9 L.ed. 2d 811 (1963). The Colorado Supreme Court, in affirming the denial of the petition for habeas corpus, but in view of the decision of *Ruark v. Colorado*, 378 U.S. 585, 84 S.Ct. 1935, 12 L.ed. 2d 1042 (1964), and in accordance with its practice since that decision, ordered the trial court to appoint counsel for Respondent. The Order is set forth as follows:

> "In view of the peculiar circumstances of this action, the plaintiff in error having specifically requested counsel for appeal to this court and the request having been specifically denied by this court prior to the decision of the United States Supreme Court in the case of Douglas vs. California, the trial court is directed to forthwith appoint counsel in this case in order to determine whether any reversible error reviewable by this court occurred during the course of the trial which was not presented upon former consideration of this case. If such error did occur, counsel should file with this court, within sixty days from his appointment, a brief setting forth such error and his argument in support of his position. Counsel is further directed to examine the pro se briefs filed by the plaintiff in error and the opinion

of the court in this cause for the purpose of determining whether the points raised by plaintiff in error were adequately presented and, if in his opinion they were not, he is directed to file a supplemental brief on behalf of plaintiff in error within sixty days from his appointment. If, in appointed counsel's opinion, no grounds for writ of error other than those presented by plaintiff in error in his original briefs occurred during the trial, and if, in his opinion, the cause was adequately presented to this court counsel shall so report to this court within said sixty days from his appointment.

By the Court. February 4, 1965."

In response to this Order that Respondent be afforded counsel, the trial court appointed one Don B. Oliver, a highly competent and experienced lawyer with many years of experience in the trial of criminal cases. In a seven-page brief, supplemented by a six-page appendix (record pp. 11 through 24), listing and analyzing authorities, counsel reported to the Colorado Supreme Court that he had examined the record, including the complete transcript of the evidence, the briefs, and the cases cited therein, and that he had consulted each of the three attorneys who appeared in the trial of the case. His conclusion, after such investigation, was that all error or alleged error was adequately covered by the opinion of the Colorado Supreme Court, and that there were no grounds of error other than those presented to the Colorado Supreme Court on the original writ of error and covered by the court in its opinion. In counsel's opinion, no further consideration of the points is required.

After considering the memorandum report of ap-

pointed counsel, the Colorado Supreme Court in *Cruz v. People,* ..... Colo. ....., 401 P.2d 830 (1965), reaffirmed its previous judgment *Cruz v. People,* supra (368 P.2d 774), and declined to appoint other counsel in the case. Thereafter, Cruz filed a Petition for a Writ of Certiorari to the Supreme Court of Colorado, which was denied by the United States Supreme Court. *Cruz v. Colorado,* 382 U.S. 869 (1965).

Subsequently, Respondent filed a petition for writ of habeas corpus with the United States District Court for the District of Colorado; whereupon the lower court granted leave to proceed in forma pauperis and ordered the Petitioner to show cause why the petition should not be granted.

Respondent contended that he was denied his constitutional right to be represented by court-appointed counsel on first appeal, which resulted in denial of due process of law and equal protection of the law secured to him by the Fourteenth Amendment, United States Constitution (record p. 2).

Petitioner made his return to the order to show cause by setting forth the same reasoning as was used by the Colorado Supreme Court in *Stanmore v. People,* ..... Colo. ....., 401 P.2d 829 (1965); and *Cruz v. People,* supra (401 P.2d 830). (Record pp. 8 through 11).

Counsel was appointed for the Respondent and a traverse to the return was filed. (Record pp. 24 through 27).

After oral argument, the Federal District Court found that there was not a compliance with the mandate of

Douglas v. California, supra, and after an extensive opinion (Record pp. 27 through 37), ordered that Respondent be granted an appellate review of his conviction, with the aid of counsel, within six months from the date of the order; and, failing that, to be discharged from custody by the Petitioner.

Upon receiving the decision of the Federal District Court Petitioner appealed to the Tenth Circuit Court of Appeals. After oral argument the Tenth Circuit Court of Appeals adopted the opinion of the lower court in *Cruz v. Patterson,* D. C. Colo., 253 F.Supp. 805 (1966), and affirmed the judgment therein.

Petitioner comes now before this Honorable Court seeking certiorari.

ARGUMENT FOR ALLOWANCE OF WRIT

Petitioner is before this Court on Petition for Certiorari for the reasons that the lower court of appeals rendered a decision which decided an important question of federal law which has not been, but should be settled by this Court, and in addition the lower court of appeals has decided a federal question in a way which is in conflict with the applicable decisions of this Court.

Petitioner urges this Court to grant certiorari for the reason that under the circumstances of this case, the lower federal court did not properly construe or interpret the case of *Douglas v. California,* supra. It necessarily follows that it is petitioner's position that in view of *Douglas v. California* the lower federal courts have misconstrued and misinterpreted the applicability of the Sixth Amendment,

the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution to the circumstances of the instant case. Therefore, petitioner feels that these are important federal questions which should be decided by this Court.

ARGUMENT

THE TENTH CIRCUIT COURT OF APPEALS ERRED IN ADOPTING THE OPINION OF THE TRIAL COURT IN *CRUZ V. PATTERSON*, D.C. COLO., 253 F.SUPP. 805, AND AFFIRMING THE JUDGMENT THEREIN.

It is the Petitioner's position that the Federal District Court erred in finding that the procedure followed by the Colorado Supreme Court in appointing counsel for the Respondent denied him effective assistance of counsel. The lower court of appeals has stated that the case of *Douglas v. California,* supra, sets for the general rule that an indigent criminal defendant is entitled to counsel in an appeal from a judgment of conviction. *Ruark v. Tinsley* (10th Cir.), 350 F.2d 945 (1965). The Colorado Supreme Court has also followed this general rule in *Adargo v. People,* ..... Colo. ....., 411 P.2d 245 (1966). In the *Adargo* case, since the defendant was denied counsel and the opportunity to file a writ of error, the time for filing was extended and the trial court was ordered to appoint counsel for the purpose of prosecuting Adargo's writ of error to his conviction in the case. It should be noted that Adargo had not appealed his case pro se.

In the instant case Respondent had appealed pro se and this state's highest court affirmed his conviction on

the merits. *Cruz v. People,* supra (368 P.2d 774). Respondent's appeal was prior to the decision in the *Douglas* case supra, and thus, at that time, it was not mandatory in this state that counsel be appointed for an indigent on appeal.

It is important to note that when a defendant appeals his case pro se in this state the Colorado Supreme Court carefully examines the record to determine whether there is any fundamental error or plain error which would affect the substantial rights of the defendant. See Rule 37(b), Colo. R. Crim. P. In fact, in *Cruz v. People,* 147 Colo. 528, 364 P.2d 561 (1961), which was the appeal of Respondent's brother, arising out of same transaction, the court stated that it could note plain error which was not assigned as error in a motion for new trial. In a pro se appeal the court also reviews the briefs and the record to determine whether a defendant's alleged error amounts to reversible error.

Petitioner submits that the Order of the Colorado Supreme Court directing the appointed counsel for Respondent must be considered in view of the history of this case, and in connection with the now applicable law as pronounced in *Douglas v. California,* supra, and other related legal principles.

It is obvious from the memorandum-report that appointed counsel, after a "conscientious and diligent investigation," found that further appellate review would be frivolous. The Federal District Court stated that *Johnson v. United States,* 352 U.S. 565, 77 S.Ct. 550, 1 L.ed. 2d 593 (1957), may be characterized as the federal counterpart of *Douglas* and that *Ellis v. United States,* 356 U.S.

674, 78 S.Ct. 974, 2 L.ed. 2d 1060 (1958), implemented *Johnson*. We agree with the principle stated in *Johnson* and *Ellis* that the duty of counsel on appeal is not to serve as amicus to the Court of Appeals but as advocate for appellant.

However, Petitioner submits that when an appeal is frivolous counsel may be allowed to withdraw and leave to appeal may be denied. *Farley v. United States,* 354 U.S. 521, 77 S.Ct. 1371, 1 L.ed. 1529 (1957). Petitioner feels that the language in *Hardy v. United States,* 375 U.S. 277, 84 S.Ct. 424, 11 L.ed. 2d 331 (1964), quoting *Ellis v. United States,* supra, supports his position wherein it is stated:

> "'If counsel is convinced, *after conscientious investigation,* that the appeal is frivolous, of course, he may ask to withdraw on that account. If the court is satisfied that counsel *has diligently investigated* the possible grounds of appeal, and agrees with counsel's evaluation of the case, then leave to withdraw may be allowed and leave to appeal may be denied. (Italics added.)' "

Petitioner would also agree that an appeal cannot be denied on appointed counsel's opinion alone, but leave to appeal may be denied if the court agrees with counsel. See *Farley v. United States,* supra, and *Hardy v. United States,* supra. Again, from the tenor of the opinions in *Stanmore v. People,* supra (401 P.2d 829), and *Cruz v. People,* supra (401 P.2d 830), it is obvious that the appointed attorneys in each case determined that further appellate review would be frivolous and the Colorado Supreme Court agreed by reaffirming its previous decisions and refusing to appoint additional counsel.

Thus, the real question is brought into focus. Should an attorney, who is directed to be an advocate, if he determines that other points should be argued or other alleged errors were not properly covered in the prior appeal, and after a conscientious investigation, is of the opinion that further appellate review would be frivolous and the court agrees with him, be labeled an amicus curiae or one who is performing a judicial function? Petitioner thinks not.

The Colorado Supreme Court adopted The Lawyer's Oath on September 11, 1922. Each lawyer takes the oath when he or she is admitted to practice in the State of Colorado. In pertinent part, each lawyer pledges that he will not counsel or maintain any suit or proceeding which appears to him to be unjust, nor any defense except as he believes to be debatable under the law of the land. Such lawyer further pledges that he will never seek to mislead the judge or jury by artifice or false statement of fact or law.

In view of the legal principle cited hereinbefore, the lawyer's duty, and fully considering the constitutional right of an indigent to counsel on appeal, Petitioner affirmatively asserts that there is no duty placed upon an attorney who, after a conscientious investigation, determines that further appeal would be frivolous and the court agreeing with counsel, to marshal frivolous arguments and violate his oath. Thus Petitioner submits that under the procedure followed by the Colorado Supreme Court in the instant case, such procedure did not result in or deny Respondent effective assistance of counsel in violation of his constitutional rights nor did the procedure under the circumstances amount to a mockery of justice.

Secondly, Petitioner contends that the Federal District Court erred in concluding that the system utilized by the Colorado Supreme Court in following the retrospective application of the rule in *Douglas v. California*, supra, is a "screening device" which resulted in counsel, in this case, assuming primarily the role of an advisor rather than an advocate.

In a strikingly similar case, *Stanmore v. Patterson*, Civil Action No. 9240, the Honorable Judge Hatfield Chilson in entering his order denying Stanmore's petition for habeas corpus stated as follows (See Appendix A for complete copy of Order):

> "It is pertinent to note that the Colorado Supreme Court gave petitioner's appointed counsel complete leeway and freedom to urge any reversible error which he found in the record, irrespective of whether or not it had been mentioned in the motion for a new trial or in the proceedings for writ of error. The Colorado Supreme Court directed petitioner's appointed counsel to examine the briefs filed by the petitioner pro se and the opinion of the Colorado Supreme Court in the former writ of error, to determine whether the points raised by the petitioner in his pro se writ of error were adequately presented, and if in counsel's opinion they were not, the court authorized petitioner's counsel to file a supplemental brief.
>
> "This Court is of the opinion that counsel was appointed to represent Stanmore and the matter has now proceeded in a constitutional manner to the end that Stanmore has had an appellate review of his judgment conviction with the benefit of counsel."

Petitioner contends that the case of *Rumph v. United States* (5th Cir.), 343 F.2d 580 (1965), supports his position. In the *Rumph* case, the court appointed attorney notified the court by letter that he found no reversible error. After the court reviewed the record it allowed the attorney to withdraw, and dismissed the appeal as frivolous. See *Fredericks v. Reincke,* 152 Ct. 501, 208 A.2d 756 (1965), wherein it was held that the state would not be required to furnish another appellate counsel where both trial counsel and first assigned appellate counsel conclude that appeal is groundless; and *Petition of Stillabowers,* ..... Ind. ....., 210 N.E. 2d 665 (1965), where the Supreme Court of Indiana declines to appoint appellate counsel when trial counsel assigned to prosecute appeal searches the record and finds no merit to appeal. Cf. *State v. Mourey* 98 A.2d 7, 401 P.2d 408 (1965).

In the recent case of *Johnson v. United States* (D.C. Cir.), 360 F.2d 844 (1966), the court denied counsel's motion to be relieved on the ground that the appeal was frivolous until defendant's counsel submitted a documented memorandum. The court pointed out that pursuant to the decision of *Ellis v. United States,* supra, it had set forth certain guidelines for assigned counsel to follow which, in cases where counsel wishes to withdraw for an asserted lack of merit in the appeal, require that he "... file a supporting memorandum analyzing the case legally, citing record references to the transcript ... and also citing any case or cases upon which counsel relied in arriving at his ultimate conclusion."

In the instant case, appointed counsel, after interviewing the attorneys who handled the case in the trial court, submitted a memorandum brief analyzing the case,

citing record references and citing cases upon which he relied in arriving at his conclusion. Accordingly, it is observed that the Colorado procedure is quite similar to the procedure set forth by the Court of Appeals, District of Columbia Circuit.

Based upon the authority cited hereinbefore, Petitioner submits that the procedure followed by the Colorado Supreme Court is not a "screening device," but is a proper procedure under the circumstances presented here. Further, Petitioner submits that the appointed attorney had a duty to advise the court in the manner that he did rather than advocate a frivolous appeal.

In passing, it should be noted that certain questions such as whether an indigent defendant is entitled to obtain second assigned counsel may be answered when the United States Supreme Court decides *Anders v. California,* 34 U.S.L.W. 3341, 3365 (No. 1181, Cert. granted 4/4/66).

Lastly the Federal District Court erred in determining that as a result of the procedure followed by the Colorado Supreme Court the Respondent was denied equal protection of the law and due process of law. The lower court of appeals stated in the case of *Chase v. Page* (10th Cir.), 343 F.2d 167 (1965), that when an appeal of right is recognized it must be afforded to rich and poor alike; however, this does not mean that the court cannot dismiss frivolous appeals whether defendant is *rich or poor.* With this proposition Petitioner agrees.

The type of appeal afforded in *Douglas v. California,* supra, hinged upon whether or not the defendant could pay for assistance of counsel. In *Douglas* the United States Supreme Court condemned the procedure which

allowed the appellate court *alone* to decide from the record whether an indigent defendant should be afforded counsel on appeal.

Exact equality is not a pre-requisite of equal protection of the laws within the meaning of the Fourteenth Amendment. *Norvell v. Illinois,* 373 U.S. 422, 83 S.Ct. 1368, 10 L.ed. 2d 459 (1965). It should be observed that a state can, consistent with the Fourteenth Amendment, provide for differences so long as the result does not amount to a denial of due process or an "invidious discrimination."

What is the invidious discrimination in the *Douglas* case? In *Reynolds v. Simms,* 377 U.S. 533, 84 S.Ct. 1362, 12 L.ed. 2d 506 (1963), the *Douglas* case was cited to show an invidious discrimination based upon economic status.

In the instant case, appellant asserts that the result reached under the procedure set forth by the Colorado Supreme Court shows no discrimination whatsoever. Petitioner refuses to believe that Respondent, if he had the money, could purchase the services of the lawyer who was appointed for him, or any other lawyer, to contend that certain errors of law exist when his conscience tells him they do not. See *Stanmore v. People,* supra, (401 P.2d 829).

Petitioner submits that the Colorado court has accepted the doctrine of *Douglas,* but it has also reasoned that it could not force an attorney to violate his oath of admission by advocating spurious theories to the court. Thus, it properly directed the state trial court to appoint an attorney for Respondent. If the attorney found issues which had not been advanced on the original appeal, and

which were not spurious, he was to file a brief advancing the same with the Supreme Court. If he found none, he was to so advise the court. The appointed attorney found, after a conscientious investigation, to the effect that further appellate review would be frivolous. In such a posture of the case, the Colorado Supreme Court reaffirmed its decision handed down in the original appeal.

Furthermore, as Petitioner reads *Douglas v. California,* supra, the general rule stated therein is based upon the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and such general rule does not apply the standard of the Sixth Amendment of the United States Constitution, which is made applicable to state action by way of the Due Process Clause of the Fourteenth Amendment of the United States Constitution. Accordingly, it is Petitioner's position that the Federal District Court misconstrued *Douglas* by, in effect, deciding that *Douglas* was authority for applying the Sixth Amendment Standard as to effective assistance of counsel.

In any event for the reasons stated hereinbefore, and, since the entire procedure followed by the Colorado Supreme Court did not amount to a sham or a mockery, Petitioner affirmatively asserts that the Respondent has not been denied due process of law.

CONCLUSION

Petitioner urges that this court enter an order granting certiorari for the reason that the Colorado Supreme Court's ruling is correct and is a proper interpretation of the Equal Protection Clause of the Fourteenth Amend-

ment to the United States Constitution. Further, based on the authority cited throughout this petition, Petitioner concludes that none of Respondent's constitutional rights have been violated.

Respectfully submitted,

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September, 1966 *Attorneys for Petitioner*

Appendix A

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 9240

WILLIS LEVI STANMORE, Petitioner,

vs.

WAYNE K. PATTERSON, Warden, Colorado State Penitentiary, Respondent.

ORDER DENYING PETITION

The petitioner seeks his release from the Colorado State Penitentiary by petition for writ of habeas corpus. From the petition it appears that the petitioner was convicted by a jury of the crimes of robbery and conspiracy to commit robbery, and the petitioner is now confined in the Colorado State Penitentiary by virtue of sentences imposed upon these convictions.

The petitioner was represented by counsel in the trial court and he filed a motion for a new trial, which was denied by the trial court.

At the time of sentencing petitioner requested the trial court to appoint counsel to appeal his conviction to the Colorado Supreme Court. This request was denied and thereupon petitioner applied by letter to the Colorado Supreme Court for court appointed counsel to assist him

in prosecuting a writ of error to the Colorado Supreme Court. This request was also denied.

The petitioner then prosecuted his appeal pro se and without the assistance of counsel and the judgment of the trial court was affirmed. *Stanmore v. The People,* 146 Colo. 445, 432 P.2d 1062, *certiorari denied,* 368 U.S. 993.

In March, 1963, the United States Supreme Court, in the case of *Douglas v. California,* 372 U.S. 353, held that the denial of an application for appointment of counsel to assist on appeal in a criminal case was a violation of a defendant's constitutional rights.

On September 10, 1964, the petitioner filed a petition for writ of habeas corpus in the trial court, based on the refusal to provide him with appointed counsel to prosecute his appeal. The petition was denied and petitioner thereupon filed a petition for writ of habeas corpus in the Supreme Court of the State of Colorado. The court denied this petition but remanded the matter to the trial court with directions to appoint counsel for petitioner. See *Stanmore v. People,* ..... Colo. ....., 401 P.2d 829.

The instructions to the trial court were to appoint counsel for the plaintiff in error (the petitioner here)

> "for the purpose of examining the record in this case in order to determine whether any reversible error reviewable by this Court occurred during the course of the trial which was not presented to this Court on the former writ of error; if such error did occur, counsel should file with this Court, within sixty days from his appointment, a brief setting forth such error and his argument in support of his position; and,

counsel is further directed to examine the briefs filed by the defendant pro se and the opinion of this Court in the former writ of error for the purpose of determining whether the points raised by defendant were adequately presented, and, if in counsel's opinion they were not, to file a brief supplemental to the defendant's pro se brief within sixty days from his appointment. If in the appointed counsel's opinion, no additional grounds for error reviewable by this court other than those raised by the defendant in his original writ of error occurred during the trial, and if, in his opinion, the matter was adequately presented to this Court, then counsel shall so report to this Court within said sixty days from his appointment."

This procedure was in essence that approved by the Circuit Court of Appeals, 10th Circuit, in *Ruark v. Tinsley, Warden,* decided September 2, 1965, Number 8241, ... F.2d .....

Stanmore petitioned the United States Supreme Court to grant certiorari to this ruling, but the petition was denied. *Stanmore v. Colorado,* 82 S.Ct. 1355, 369 U.S. 842.

The trial court appointed Mr. John F. Mueller, an attorney in Denver, Colorado, to represent Stanmore in accordance with the order of the Colorado Supreme Court.

Mr. Mueller thereafter made a report to the Colorado Supreme Court in which he advised the Colorado Supreme Court, after a discussion of the record of the trial, as follows:

"I believe after a detailed examination and study of all of the records of the Trial Court and the Record and Bill of Exceptions in this Court, that the

points raised in the briefs filed by the plaintiff in error were promptly presented and considered by this Court and in the Opinion in this cause. I do not believe that there are additional grounds for error reviewable by this Court and as to any points having any merit. The matters were adequately presented to this Court, and in view of the above report, nothing would be gained by filing additional briefs in this matter."

The Colorado Supreme Court, in considering the matter after receipt of Mr. Mueller's report, stated in part as follows:

"In response to our order that defendant be afforded counsel, the trial court appointed one John F. Mueller, a most able and seasoned lawyer with vast experience in the field of criminal law trial practice.

"Mr. Mueller, in a 19 page brief, advises us that he has made a detailed study of the entire record, including the transcript of testimony consisting of 405 typewritten pages and 1311 folios. He details all of the points raised, discusses them thoroughly, and concludes with the statement that in his opinion all points reviewable were properly presented and considered by the Court; that there were no grounds of error in addition to those presented to this Court which merited considerations, and that nothing would be gained by filing any additional briefs."

It is pertinent to note that the Colorado Supreme Court gave petitioner's appointed counsel complete leeway and freedom to urge any reversible error which he found in the record, irrespective of whether or not it had been mentioned in the motion for a new trial or in the pro-

ceedings for writ of error. The Colorado Supreme Court directed petitioner's appointed counsel to examine the briefs filed by the petitioner pro se and the opinion of the Colorado Supreme Court in the former writ of error, to determine whether the points raised by the petitioner in his pro se writ of error were adequately presented, and if in counsel's opinion they were not, the court authorized petitioner's counsel to file a supplemental brief.

This Court is of the opinion that counsel was appointed to represent Stanmore and the matter has now proceeded in a constitutional manner to the end that Stanmore has had an appellate review of his judgment conviction with the benefit of counsel.

The Court concludes that the petition for writ of habeas corpus should be denied.

IT IS THEREFORE ORDERED that the petition be and the same is hereby denied.

DATED at Denver, Colorado, this 8th day of October, 1965.

By the Court:

HATFIELD CHILSON, Judge
United States District Court

APPENDIX B

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 8726

July Term, 1966

WAYNE K. PATTERSON, Warden of Colorado State Penitentiary, Appellant,

v.

RAUL LEOPOLDO CRUZ, Appellee.

Appeal from the United States District Court for the District of Colorado

Filed, United States Court of Appeals Tenth Circuit August 8, 1966

George E. DeRoos, Asst. Atty. Gen., (Duke W. Dunbar, Atty. Gen., and Frank E. Hickey, Deputy Atty. Gen., on the brief) for appellant.

Harry L. Arkin for appellee.

Before PHILLIPS, JONES and BREITENSTEIN, Circuit Judges.

PER CURIAM.

All of the questions raised on this appeal were considered and decided by the trial court in an exhaustive and well reasoned opinion, Cruz v. Patterson, D.C. Colo., 253 F.Supp. 805. Being in full accord therewith, we adopt it as the opinion of this court and affirm the judgment.